

(2011) 03 P&H CK 0749

High Court Of Punjab And Haryana At Chandigarh

Case No: C.M. No. 9606-C of 2010 in Regular Second Appeal No. 1765 of 2006

Lakha Singh

APPELLANT

Vs

Kanwaljit Singh and Others

RESPONDENT

Date of Decision: March 18, 2011

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Judgement

Rakesh Kumar Garg, J.

Defendant No. 1 who is the Appellant before this Court in this appeal, has challenged the judgment and decree dated 12.4.2006 passed by Additional District Judge, Hoshiarpur, whereby appeal filed by Plaintiff-Respondents No. 1 and 2 was accepted and while setting aside the judgment and decree of the trial Court, their suit was decreed in the following manner:

The Plaintiff/Appellants in the above named appeal to the Addl. District Judge's Court at Hoshiarpur from the judgment and decree of the Court of Sh.K.S. Cheema, Addl. Civil Judge (Sr. Division) Dasuya dated 8.10.2002 for thereasons given in the grounds of appeal, attached separately:

This appeal coming on 12th day of April 2006 for final disposal before me (Balbir Singh, Addl. District Judge, Hoshiarpur) in the presence of Shri Vivek Bhalla, Advocate, counsel for the Appellants, Sh.A.K. Mehta, Adv. counsel for Respondents No. 1 and Shri Ajay Gupta, Adv. counsel for Respondent No. 2, it is ordered that the judgment and decree passed by the learned lower Court is set aside the suit of the Plaintiff for permanent injunction for restraining the Defendant No. 1 from cutting and removing the jand tree and not to obstruct the passing of the water from the drain in question and not to obstruct the passage of the Plaintiffs as claimed in the site plan Ex. P6 and the suit of the Plaintiffs for mandatory injunction for directing the Defendant No. 1 for removing the wall constructed by the Defendants to block the passage of the Plaintiff towards the northern side touching the Railway road as shown in the site plan attached with the report of the Local Commissioner, Ex.P.7 is

ordered to be decreed and the appeal is allowed. The parties, however, are left to bear their own costs, in view of the peculiar circumstances of the case.

Vide order dated 19.5.2006, notice of motion was issued. Execution of the decree was also stayed.

2. It is a matter of record that Shri R.K. Joshi, Advocate, continued to appear for Respondent No. 1 in this case on various dates. However, thereafter he withdrew from the appeal by submitting that Respondent No. 1 has already sold the property during the pendency of the lis. It may also be mentioned that Respondent No. 2 was ordered to be proceeded against ex parte.

3. Thereafter, on an application moved by the Appellant one Ashok Kumar son of Mange Ran, resident of Railway Road, Dasuya, was impleaded as Respondent No. 4. Thereafter, on 5.4.2010, one Shri Rajive Dhawan, Advocate, appearing on behalf of Respondent No. 4 placed an affidavit dated 4.9.2009 of Respondent No. 4 which was taken on record and marked as "CX". In this affidavit, it was stated on behalf of Respondent No. 4 that he does not want to pursue the said appeal and the same be decided in due course of law.

4. Vide order dated 27.4.2010 counsel for the Appellant was granted an adjournment to enable him to place on record the compromise arrived at between the parties. However, on 1.7.2010 none appeared and the appeal was dismissed in default by passing the following order:

Present: None.

On the last date of hearing, learned Counsel appearing on behalf of the Appellants had stated that a short adjournment be granted to enable Appellant to place on record the compromise between the parties. Today, neither any compromise has been placed on record, nor counsel for the Appellant is present.

Dismissed in default.

5. C.M. No. 9606-C of 2010 dated 12.7.2010 for restoration and C.M. No. 9150-C of 2010 dated 12.7.2010 were filed by the Appellant to place on record Annexure-C1 alleged compromise between Appellant and Respondent No. 4. This compromise Annexure C1 does not bear any date. In C.M. No. 9606-C of 2010 notice was given to the Respondents. It was also directed that Respondents be served by way of dasti as well but Respondents No. 1 and 2 could not be served. Thereafter, it was directed that fresh notices be issued to Respondents No. 1 and 2 on furnishing of correct address. However, counsel for the Appellant failed to do the needful and sought another adjournment on 11.2.2011 to do the needful.

6. Today C.M. No. 3020-CII of 2011 has been filed submitting that the Appellant could not trace out the addresses of Respondents No. 1 and 2 and, therefore, they be served by substituted service. Another application has been filed to place on

record a photocopy of the sale deed dated 17.1.2002 on record according to which area measuring 0-0-2 as per jamabandi for the year 1997-98 was sold to the Appellant by Respondent No. 4.

7. From the facts narrated above, it is made out that the Appellant is claiming that Respondents No. 1 and 2 during the pendency of this appeal sold the property in dispute to Respondent No. 4 who has executed a compromise in favour of the Appellant and thus on the basis of the aforesaid compromise this appeal be decreed in their favour.

8. However, certain facts which have been established on record are necessary to be mentioned at this stage, as these facts create a doubt in the mind of the Court which has restrained this Court from granting the relief as prayed in these applications. Earlier Respondent No. 4 was represented by one Shri Rajive Dhawan, Advocate. However, for the reasons best known to him he is not appearing in the case and not only this, on the civil miscellaneous application for substituted service and placing on record the alleged sale deed dated 17.1.2002, a note is given that copies of the said applications have been given to Shri Vishal Goel, Advocate. In the pre-lunch session Mr. Vishal Goel, Advocate, was present in Court and he was asked to whom he was representing, however, he could not disclose the name of his client before this Court. Thereafter, Mr. Vishal Goel, Advocate, sought a pass-over. On his request pass-over was given but when this case has been taken up in the second round after lunch he is conspicuous by his absence. I have also found from the record that there is no vakalatnama of Mr. Vishal Goel, Advocate, on the record. Even no memo of appearance has been filed on his behalf. This Court is at a loss to make out as to how the counsel for the Appellant has given an advance copy to Shri Vishal Goel, Advocate. Even, Mr. Munish Gupta, who is appearing on behalf of the Appellant could not give any explanation in this regard.

9. It may also be mentioned that the suit of Plaintiff-Respondents was pending before the trial Court when allegedly Plaintiff-Respondents sold the suit property to Respondent No. 4 but he or the Appellant never brought this fact before the trial Court. Even before the lower Appellate Court this fact was not brought on record. Not only this, in the affidavit mark CX Respondent No. 4 has only mentioned that he does not want to pursue this appeal as proforma Respondent No. 4, and the same be decided in due course of law. In the alleged compromise Annexure C1 attached with C.M. No. 9150-C of 2010, no date of compromise is mentioned. Even the compromise itself is undated. It has also been brought to the notice of this Court that earlier Mr. Rajive Dhawan, Advocate, was working in the office of counsel for the Appellant as Junior Advocate.

10. Keeping in view the aforesaid facts, this Court is not inclined to grant any relief to the Appellant for according compromise or for restoration of the appeal as the applications lack bona-fide of the Appellant.

11. Dismissed with costs which are assessed at Rs. 10,000/-.